

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

March 19, 1998

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1916-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH J. POUNDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Kenneth Pounds appeals from a felony conviction, and an order denying his postconviction motion. Pounds received an enhanced sentence as a repeater. The issue is whether the State sufficiently proved its repeater allegation. We conclude that it did, and therefore affirm.

Pounds committed his crime on August 27, 1994. The State alleged that he was a repeater because he had been convicted of a prior felony within five years of that date, after excluding a prison term Pounds served on the prior conviction. Pursuant to a plea bargain, Pounds entered a no contest plea to a reduced felony charge and admitted the repeater allegation. At sentencing, the only proof of the time served and Pounds's release date on the previous conviction was from two presentence reports, one of which reported June 24, 1988, for commencement of the sentence and September 1, 1989, for his release. There is no dispute that if, in fact, he served the reported prison term, then he is a repeat felon under § 939.62(2), STATS., and subject to an enhanced penalty.¹ The issue is whether the State may use only a presentence report prepared by a Department of Corrections probation agent to prove the dates of a prison term for repeater purposes.

The State sufficiently established the dates of Pounds's prior prison term through the presentence report. Section 973.12(1), STATS., provides that for the purpose of proving repeater status an official report of any government agency "shall be prima facie evidence of any conviction or sentence therein reported." It is settled law that a presentence report qualifies under this section as prima facie evidence if it shows independent verification of the dates shown from sources other than the complaint. *State v. Caldwell*, 154 Wis.2d 683, 693-94, 454 N.W.2d

¹ Section 939.62(2), STATS., provides in relevant part that a defendant is a repeater if convicted of a felony during the five-year period immediately preceding the commission of the charged crime. "In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded." *Id.* It appears that the trial court computed the beginning of the five-year repeater period using the date Pounds's sentence commenced—June 24, 1988. Because Pounds has never objected to that date, we do not consider whether the trial court should have used the verdict date, of March 9, 1988, under our holding in *State v. Wimmer*, 152 Wis.2d 654, 656, 449 N.W.2d 621, 621 (Ct. App. 1989).

13, 18 (Ct. App. 1990). That is true for the date of the prior conviction, and for any relevant prison sentence as well, as § 973.12(1) plainly states. That resolves the matter because the report relied on DOC records rather than the complaint. Additionally, Pounds admitted to his repeater status at the plea hearing, and never challenged the accuracy of the dates in the report although the trial court gave him the opportunity to do so at the sentencing hearing.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

